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APPLICATION NO. FILING DATE FIRST NAMED INVENTOR ATTORNEY DOCKET NO. CONFIRMATION NO. 10/642,441 08/14/2003 Rene Francois Monet BR6.P38 2481 **EXAMINER** 21792 7590 02/03/2005 HWU, JUNE

STRATTON BALLEW 213 S 12TH AVE YAKIMA, WA 98902

ART UNIT PAPER NUMBER

1661

DATE MAILED: 02/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary		Application No.	Applicant(s)
		10/642,441	MONET, RENE FRANCOIS
		Examiner	Art Unit
		June Hwu	1661
The MAILING DATE of thi Period for Reply	s communication app	ears on the cover sheet with the	correspondence address
after SIX (6) MONTHS from the mailing da - If the period for reply specified above is let - If NO period for reply is specified above, th - Failure to reply within the set or extended	COMMUNICATION. the provisions of 37 CFR 1.13 te of this communication. ss than thirty (30) days, a reply e maximum statutory period w period for reply will, by statute, three months after the mailing	'IS SET TO EXPIRE 3 MONTH (6(a). In no event, however, may a reply be ti within the statutory minimum of thirty (30) da fill apply and will expire SIX (6) MONTHS from cause the application to become ABANDONI date of this communication, even if timely file	mely filed ys will be considered timely. n the mailing date of this communication. ED (35 U.S.C. § 133).
Status			
1) Responsive to communication	ation(s) filed on	_•	
2a)⊠ This action is FINAL.	2b)☐ This	action is non-final.	
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.			
Disposition of Claims			
4) ⊠ Claim(s) <u>1</u> is/are pending 4a) Of the above claim(s) 5) □ Claim(s) <u>is/are allo</u> 6) ⊠ Claim(s) <u>1</u> is/are rejected.	is/are withdrawwed.	n from consideration.	
7) Claim(s) is/are objected to. 8) Claim(s) are subject to restriction and/or election requirement.			
Application Papers			
• • • • • • • • • • • • • • • • • • • •	November 2004 is/an at any objection to the objection to	re: a)⊠ accepted or b)⊡ object drawing(s) be held in abeyance. Se on is required if the drawing(s) is ob	e 37 CFR 1.85(a). ojected to. See 37 CFR 1.121(d).
Priority under 35 U.S.C. § 119			
2. Certified copies of t3. Copies of the certified application from the	None of: he priority documents he priority documents ed copies of the prior International Bureau	s have been received. s have been received in Applicat ity documents have been receiv	ion No ed in this National Stage
Attachment(s)			
1) Notice of References Cited (PTO-892)		4) Interview Summary	
 Notice of Draftsperson's Patent Drawi Information Disclosure Statement(s) (I Paper No(s)/Mail Date 		Paper No(s)/Mail D 5) Notice of Informal I 6) Other:	ate Patent Application (PTO-152)

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DETAILED ACTION

The amendment filed November 8, 2004 has been acknowledged.

It is noted that there is a spelling error on the title of the employed color chart on page 3, line 4.

The text of those sections of Title 35, U.S. Code not included in this action can be found in the prior Office action.

Drawings

The drawings have been approved.

35 USC § 102

The rejection of claim 1 under 35 U.S.C. 102 (b) is withdrawn in view of Applicant's amendment.

Claim Rejections - 35 USC § 112

Claim 1 remains rejected under U.S.C. 112, first and second paragraphs, for reasons stated in the prior Office actions (dated August 6, 2004, pages 3-7) and as are detailed below.

Response to Arguments

Applicant argues that the written description in the disclosure is reasonably complete in accordance to 37 C.F.R. 1.163. In addition, the completeness of the description does not include every quantifiable feature of the plant. This argument has been fully considered, however, is not persuasive because 37 C.F.R. 1.163(a) states, "The specification must contain

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as full and complete a disclosure as possible of the plant <u>and</u> the characteristics thereof..." thus the entire plant, not just some of the characteristics must be described. Moreover, 35 U.S.C. 162 also states that the description must be "as complete as is reasonably possible." See also MPEP 1605.

Applicant argues that a detailed botanical description in the disclosure may appeal to the botanist, patent examiner or patent applicant but does not have any influence to prevent a plant patent from an infringer. This argument has been fully considered, however, is not persuasive because the patentee must first compare his or her plant from the infringer's plant. If the descriptions in the disclosure were lacking or vague of certain characteristics, then it would be difficult to distinguish the patented plant from the infringer's plant. Patent prosecution and infringement are separate issues. The standard for prosecution rests on the rules of 37 CFR 1.163. 37 CFR 1.163 further states "... characteristics thereof that distinguish the same over related known varieties, and its antecedents..."

Applicant argues that a description of variable characteristics does not aid in identifying the plant but further presents vague and ambiguous information. This argument has been fully considered, however, is not persuasive because variable characteristics and ranges would strengthen the disclosure rather than limiting it to an exact size.

Applicant's amendment dated November 8, 2004 failed to address the following grounds of rejection:

A. Applicant has not set forth in the specification how the instant cultivar is distinguished from its parents. 37 CFR 1.163 (a) states, "...the characteristics thereof that distinguish the same over related known varieties, and its antecedents..." Correction is required.

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B. Applicant has not set forth in the specification a botanical description of the leaf stipules'

size, shape and color designation. If available, correction is necessary.

C. Applicant has not set forth in the specification the color designation of the branch

anthocyanin.

D. Applicant has not set forth in the specification a botanical description of the leaf glands'

size and color designation. If available, correction is necessary.

E. Applicant has not set forth in the specification the size and color designation with

reference to the employed color chart of the pit cavity.

F. Applicant has not set forth in the specification a botanical description of the stone such

as length, width, base and apex shapes and surface texture.

G. Applicant has not set forth in the specification a botanical description of the kernel such

as size, shape and color designation.

Applicant's amendment dated November 8, 2004 failed to address the following new

grounds of rejection:

H. Page 3, line 17, the recitation "166DA" is unclear regarding the color designation of the

trunk. Clarification and correction are necessary.

Conclusion

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No claim is allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Future Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to June Hwu whose telephone number is (571) 272-0977. The Examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Wang, can be reached on (571) 272-0811. The fax number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JH

ANNE MARIE GRUNBERG PRIMARY EXAMINER